REMARKS

Claims 1-3 are currently pending. Claim 1 has been amended. Applicant requests further consideration and examination in view of the following remarks.

Rejection Under 35 U.S.C. § 102

Claim 1 is rejected under 35 U.S.C. 102(a) as anticipated by U.S. Patent No. 4,946,448 as to Richmond (hereinafter "Richmond").

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim," see M.P.E.P. § 2131, citing In re Bond, 15 USPQ2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," see M.P.E.P. § 2131, citing Richardson v. Suzuki Motor Co., 9 USPQ2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejection does not satisfy these requirements.

Claim 1 requires a valve element forming a first seal with the first valve seat in response to a first pressure, the first pressure resulting from fluid in the flow channel, the valve element forming a second seal with the second valve seat in response to a second pressure, the second pressure resulting from fluid in the flow channel, the second pressure greater than the first pressure of the fluid in the flow channel, and the valve element forming an open configuration between said lumen and said flow channel in response to a third pressure resulting from fluid in the injection lumen the third pressure greater than one of said first pressure and said second pressure.

Applicant's amendments to claim 1 are meant to clarify that the first pressure and the second pressure result from fluid in the flow channel, the second pressure merely being greater than the first pressure. The first pressure causes the valve element to form a first seal with the first valve seat while the second pressure causes the valve element to form a second seal with the second valve seat. The third pressure results from fluid in the injection lumen and causes the valve element into an open condition.

In the Examiner's rejection the Examiner correctly describes the operation of the check valve of Richmond in forming a seal using valve seat 78 in response to a pressure resulting from fluid in conduit 34. This pressure is represented by P1 in Figure 2.

With respect to the second pressure and second seal recited in claims 1, the Examiner states that it is inherent that a second pressure (a force to press down) is greater than the first pressure, therefore the valve disk 84 is open and liquid flows downwardly. This is clearly different that the recitation of the second pressure in claim 1. Claim 1 requires both that the second pressure and the first pressure both result from fluid in the flow channel. The recitation of the Examiner describes the opposite. Further, the second pressure results in the formation of a second seal. The Examiner admits that the pressure described in Richmond would cause the valve into an open position allowing liquid to flow.

The Examiner has also pointed to elements 82 and 83 as forming a second valve seat. Applicant respectfully disagrees. Richmond describes element 82 as a series of prongs, and element 83 as the rounded tips of those prongs. Column 4, lines 45-49. The prongs are not a valve seat as described by the Examiner, but instead are used to support the valve disc 84 when the check valve is in the open conditions, permitting liquid to flow. Column 4, lines 52-55. Prongs 82 are, therefore, not a valve seat upon which the valve element can form a second seal in response to the second pressure as required by claim 1.

While Richmond describes a check valve with a closed position in response to a downstream pressure and an open position in response to an upstream pressure, nowhere does Richmond describe the valve element forming a second seal with the second valve seat in response to a second pressure, the second pressure resulting from fluid in the flow channel, the second pressure greater than the first pressure of the fluid in the flow channel as is required by claim 1.

As Richmond does not describe each and every limitation of claim 1, claim 1 is allowable over Richmond.

Rejection Under 35 U.S.C. § 103

Claims 1-3 are rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,922,954 as to Blomquist et al (hereinafter "Blomquist") in view of U.S. Patent No. 3,889,710 as to Brost (hereinafter "Brost").

To be found obvious under 35 U.S.C. § 103, each element of a claim must be shown to be known in or obvious from the prior art, see *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S.____ (2007). The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, M.P.E.P. § 2142; *In re Peehs*, 612 F.2d 1287, 204 USPQ 835, 837 (CCPA 1980). Applicant respectfully traverses the 35 U.S.C. § 103 rejection at least for the reason that a *prima facie* case of obviousness has not been established as required by the foregoing.

The Examiner has states that Blomquist describes the limitations of claim 1 set forth above. Applicant respectfully disagrees. Blomquist describes a bi directional vent for a fuel tank that includes a seal element 37 that includes valve seats 38 and 39. Abstract and Figure 7. Instead of responding to pressures to cause the valve element to form seals against valve seats, Blomquist does the opposite. When the pressures inside the tank and outside the tank are equal, the valve element of Blomquist rests against the valve seats 38 and 39. Figure 7. When there is a pressure differential between the inside of the take and the outside of the tank, the valve element either moves off of seat 39 to allow air to enter the tank, Figure 8, or off of seat 38 to allow air to exit the tank, Figure 9.

Blomquist never responds to a first pressure by forming a first seal with the valve element disposed against a first valve seat.

Further, Blomquist never describes a first and a second pressure both resulting from fluid in a flow channel. Nor does Blomquist describe a the valve element forming a second seal with the second valve seat in response to a second pressure, the second pressure resulting from fluid in the flow channel, the second pressure greater than the first pressure of the fluid in the flow channel as is required by claim 1. As Blomquist does not describe, and Brost is not relied upon as describing, a first pressure and a second pressure both resulting from fluid in a fluid channel where the second pressure is greater than the first pressure. Neither

Blomquist, nor Brost, alone or in combination describe each and every limitation of claim 1 as required under 35 U.S.C. 103.

Claim 1 is therefore allowable over the rejection of record.

Claims 2 and 3 depend directly from claim 1 and inherit all the limitations thereof. For the reasons described with respect to claim 1, therefore, claims 2 and 3 are allowable over the rejection of record.

Rejection of Double Patenting

Claims 1-3 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, and 5-7 of U.S. Patent No. 6,364,861. In rejecting the claims, the Examiner asserts that "although the conflicting claims are not identical, they are not patentably distinct from each other because they are not structurally distinguishable from the claims in the patent." Office Action page 4. Applicant respectfully disagrees.

In the response dated August 28, 2008, Applicant pointed out that claims 1-3 require the valve element forming an open configuration between said lumen and said flow channel in response to a third pressure resulting from fluid in the injection lumen the third pressure greater than one of said first pressure and said second pressure. As this limitation is not found in claims 1-25 of the '861 patent, the claims of the present application are structurally distinguishable and therefore patentably distinct from the claims of the '861 patent.

Applicant, therefore requests that the double patenting rejection be withdrawn.

CONCLUSION

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes a fee of $810.00 is due with this response. However, if any additional fee is due, or at any time during the pendency of this application, please charge any additional fees required or credit any overpayment to Deposit Account No. 06-2380, under Order No. 74688/P004CP1D1/10804933 from which the undersigned is authorized to draw during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Dated: February 24, 2009

I hereby certify that this document is being transmitted to the Patent and Trademark Office via electronic filing.

Date of Transmission: February 24, 2009

Signature: _____
(Jan Cleveland)

Respectfully submitted,

By _____
Craig J. Cox
Registration No.: 39,643
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-7142
(214) 855-8200 (Fax)
Attorney for Applicant